GOVERNMENT OF INDIA
EXTERNAL AFFAIRS
LOK SABHA

UNSTARRED QUESTION NO:652
ANSWERED ON:02.12.2015
Negotiating Political Ttreaties
Gaikwad Dr. Sunil Baliram;Gupta Shri Sudheer;Kachhadia Shri Naranbhai;Kirtikar Shri Gajanan Chandrakant;Mahato Shri Bidyut Baran;Singh Shri Kunwar Haribansh

Will the Minister of EXTERNAL AFFAIRS be pleased to state:

(a) whether her Ministry is entrusted with the task of negotiating all political treaties, agreements and conventions with foreign countries;

(b) if so, whether the Government has proper system for participation, formulation and implementation of such international agreements and if so, the details thereof;

(c) whether there is any proposal for the creation of a new body to ensure that matters related to international treaties and agreements are formulated and implemented in a better way; and

(d) if so, the details thereof?

Answer

THE MINISTER OF STATE IN THE MINISTRY OF EXTERNAL AFFAIRS
[GEN. (DR) V. K. SINGH (RETD)]

(a) As per the Government of India (Allocation of Business) Rules, 1961, the Ministry of External Affairs is entrusted with the task of negotiating and concluding all political treaties, agreements and conventions with foreign countries and Commonwealth Countries.

(b) In consultation with the Ministry of External Affairs, Cabinet Secretary had issued guidelines in 2007 for concluding International Treaties/Agreements with the foreign countries. Copy of guidelines is annexed for reference.

(c) There is no proposal for the creation of a new body.

(d) Does not arise.

ANNEX
GUIDELINES FOR CONCLUDING INTERNATIONAL TREATIES
BETWEEN INDIA AND FOREIGN COUNTRIES

Detailed guidelines regarding negotiation, conclusion, signature and ratification/accession of treaties (which includes treaties, agreements, MOUs, Protocols, agreements by exchange of letters, etc.) are set out below.

A. Negotiation:

Delegations to an international conference at which negotiation of an agreement, treaty or convention takes place may be required to produce credentials signed by the Minister for External Affairs. These credentials constitute the authority to participate in the negotiations as representatives of the Government of India, and to initial the agreement or treaty at the conclusion of the negotiations. The purpose of initialing is to confirm the text of the agreement or treaty so concluded. The credentials will be obtained by the UNES Division of the Ministry.

In case of bilateral negotiations, no formal credentials are required. However, the schedule of negotiations, and the composition of delegations must be finalized and conveyed through the concerned Territorial Division of the Ministry of External Affairs.

B. Required Approvals:

According to the Transaction of Business Rules, all international agreements or treaties require Cabinet Approval before they are signed and ratified, except those which are specifically exempted.

Before any agreement/treaty/MoU, etc. is put up for approval of the Cabinet for signing and ratification, the text of the treaty should be cleared by Ministry of External Affairs from legal and drafting angle by the Legal and Treaties Division and by the concerned Territorial Division from the political angle. The draft note for Cabinet circulated by the Administrative Ministry should also be sent for the

Ministry's clearance and the note should indicate such clearance. The Legal and Treaties Division must also be consulted during the negotiations for advice and guidance on the legal aspects.

C. Exceptions to seeking Cabinet Approval:

According to Rule 7 of the Second Schedule of the Transaction of Business Rules, 1961, Cabinet approval is not required in case of the following bilateral agreements/MoUs, which may be signed and ratified with the approval of the Minister for External Affairs and the Minister in charge of the subject-matter and later circulated to the Cabinet for information:

(a) Cultural Agreements and Agreements on Science and Technology;
(b) Foreign Aid Agreements and Commercial Agreements which are within the broad framework already approved by the Cabinet.

D. Full Powers:

Once the prescribed approvals are obtained, the person authorized to sign the treaty/agreement on behalf of India requires to be invested with the necessary "Full Powers" to sign the said treaty or agreement. The Legal and Treaties Division prepares the instruments of "Full Powers" for signature of the President of India under which the person specifically named in the instrument is authorized to sign the treaty on behalf of India.

E. When are Full Powers required?

Based on the international law and practice relating to treaties, the following procedure is being followed:

1. President, Prime Minister and Minister for External Affairs do not require Full Powers.

2. Ambassadors/High Commissioners may adopt/initial MoUs or Agreements with the country to which they are accredited.

3. Full Powers are not required when Agreements are signed in the presence of President or Prime Minister during high level visits.

4. In all other cases, Full Powers are required for signing international agreements/treaties with foreign countries.

F. Entry into force:

A treaty enters into force in accordance with the requirements stipulated in its provisions. If so provided, a treaty may enter into force on signature. In other cases, it may require ratification. Multilateral treaties may enter into force through signature followed by ratification or through accession.

G. Ratification:

The instruments of ratification or accession are prepared by the Legal and Treaties Division and put up for the President's signature.

In case of a bilateral treaty, the Instruments of Ratification become effective only after they are exchanged, which may be done through the concerned Territorial Division. In case of a multilateral treaty, the instrument of ratification is to be deposited with the depositary to the treaty.

In view of the above, all Ministries and Departments of the Government of India are requested to adhere to the following procedures:

1. The concurrence of the Ministry of External Affairs from political and legal angles must be obtained in case of all treaties and agreements, etc.

2. The Legal and Treaties Division must be consulted during the negotiations for advice and guidance on the legal aspects.

3. Proposals for seeking Cabinet approval for signing and ratification/accession of treaties must be sent to the Ministry of External Affairs for approval/concurrence from the political and legal angles.

4. Requests for obtaining Instruments of Full Powers, Ratification or Accession must be sent to the Legal and Treaties Division along with copies of the required approvals.

5. Requests for credentials for participation in international conferences should be sent to the UNES Division.

6. In case of bilateral negotiations, all correspondence regarding the scheduling of negotiations, composition of delegations, dates of signing, exchange of ratifications, etc. should be forwarded through the concerned Territorial Division.

7. The Territorial Division and the Legal and Treaties Division must be kept informed of all treaty actions, such as signature, ratification and entry into force, and certified copies of all treaties may also be sent for their reference and record.

[Should any clarification be required on the above guidelines, it could be sought from Joint Secretary (L&T), Ministry of External Affairs (Tel: 23381839; Fax: 23389724)]